

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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PAAB Docket No. 2019-063-10028A

Parcel No. 00300-00-000

**Robert Loynachan,**

Appellant,

vs.

**Marion County Board of Review,**

Appellee.

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PAAB Docket No. 2019-063-10020A

Parcel Nos. 00290-000-00 & 00299-000-00

**Denis Johansen,**

Appellant,

vs.

**Marion County Board of Review,**

Appellee.

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**Introduction**

These appeals came on for hearing before the Property Assessment Appeal Board (PAAB) on November 20, 2019. Robert Loynachan and Denis Johansen (Appellants) were self-represented and requested the appeals be consolidated. The

Marion County Board of Review was represented by Assistant County Attorney Ross Gibson but it did not participate in the hearing.

The Robert D. Loynachan Living Trust owns an agriculturally classified property located at 1750 192nd Place, Knoxville. The property's January 1, 2019 assessment was set at \$151,200, allocated as \$30,450 in land value and \$120,750 in dwelling value. (Docket 10028A, Ex. A, Amended).

Denis and Nancy Johansen own two unimproved agriculturally classified properties located in Clay Township, Marion County. The January 1, 2019 assessment for Parcel 00298-000-00 was set at \$37,270. The January 1, 2019 assessment for Parcel 00299-000-00 was set at \$36,750. (Docket 10020A, Ex. A).

The Appellants petitioned the Board of Review claiming an error in their assessments. Iowa Code § 441.37(1)(a)(4). (Dockets 10028A & 10020A, Ex. C). The Board of Review denied the petition. (Dockets 10028A & 10020A, Ex. B).

The Appellants appealed to PAAB reasserting their error claim and now also assert their properties are assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(1 & 4).

### **General Principles of Assessment Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

## Findings of Fact

The subject properties are three adjoining agriculturally classified parcels. (Dockets 10028A & 10020A, Ex. E).

Johansen owns two unimproved adjoining parcels with a total site size of 79.98 acres. (Docket 10020A, Ex. D, pp. 1-2).

Loynachan Trust owns a 40.19-acre site improved with a one-and-a-half-story home originally built in 1925 that is located south of Johansen's parcels. The dwelling was moved to the subject site sometime after 2013, at which time it was placed on a new foundation and an addition was built in 2014. There is also a small shed built in 2016. (Docket 10028A, Ex. A, Amended & Ex. D, p. 3).

The following table summarizes the land assessment information, which is most pertinent to these appeals. Johansen's parcels shall hereinafter be collectively referred to as Parcel J. The Loynachan Trust's parcel will hereinafter be referred to as Parcel L.

Owner	Parcel	Size (acres)	Cropland (acres)	Non-Cropland (acres)	CSR2 Range <sup>1</sup>	Land Assessment
Johansen	0029800000	40.04	13.37	26.67	43 to 91	\$37,270
Johansen	0029900000	39.94	26.82	13.12	5 to 91	\$36,750
Loynachan Trust	0030000000	40.19	20.02	20.17	43 to 80	\$30,450

Loynachan testified for the Appellants and provided a history of the parcels, reporting they had been extensively strip mined between 1989 and the early 2000s. An April 2018 letter from Patrick Chase, a Resource Soil Scientist with the USDA, confirmed the decades long strip mining and reclamation of the subject parcels. (Dockets 10028A & 10020A, Ex. 3).

The USDA letter included some aerial photographs of the subject sites depicting the transition between 1989 and 2017. The Appellants also submitted some aerial photographs of the subject sites for the same purpose. (Dockets 10028A & 10020A, Exs. 1-2 & 5-6).

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<sup>1</sup> Tracts designated as 'Water' with a CSR2 rating of zero were excluded from this range.

Johansen testified there are still portions of the subject parcels with visible residue of the mining. Parcel J's use is divided between hay ground and untilled land. He stated in some areas there is no top soil. He explained that roughly 42 acres of Parcel J are used for hay because the remainder of the site is so poorly reclaimed that it caused equipment damage when hay was attempted to be harvested. As hay production on the parcels declined, the Appellants had to get a "sodbuster" permit, which resulted in a conservation plan for the parcels. Johansen testified that as a result of the conservation plan, he is not allowed to plant corn because of the poor soil conditions. He is able to plant a rotation of soybeans, oats, and grass. Regardless, he testified the strip mining and reclamation has impacted the soil productivity and soil moisture. His most recent rotation of soybeans yielded less than twenty bushels per acre. Johansen also testified that because of the highly erodible conditions of the parcels, grazing cattle or other livestock was also prohibited. Loynachan testified Parcel L has never been row-cropped since he purchased it in 2002, and it is just grass and hay.

Loynachan explained the Appellants' concerns began in 2017 when the CSR soil ratings of the parcels were substantially increased resulting in increased assessed values. Johansen also testified about the significant increase in assessed values resulting from the changes of soil rating system.

The Appellants submitted a March 2018 letter from the Marion County Assessor's Office, explaining that when the new CSR2 rating system went into effect in 2017, prior adjustments that may have been made to CSR ratings were removed because the new rating system was "supposed to take all things into consideration when valuing ag land properly..." (Dockets 10028A & 10020A, Ex. 7). The letter also indicates the Assessor contacted Bill Buttrey, a GIS mapping coordinator, who researched mines and reclamation projects in the area. The mining information from the State of Iowa that Buttrey reviewed showed only Parcel J had mining activity, and Parcel L was not part of the mining operations. This opinion is contrary to Chase's opinion who confirmed decades long strip mining and reclamation occurred. (Dockets

10028A & 10020A, Ex. 3). Buttrey's information also appears inconsistent with the aerial photographs in the record.

Loynachan testified about a conversation with the Marion County Assessor in 2017. He stated that at that time, the Assessor told him she was required to use the form obtained from the State of Iowa, which is provided by the Natural Resources Conservation Service (NRCS). Johansen testified to the same. Johansen also reported through its own investigation the Board of Review confirmed there was a "major problem" throughout the county but did not believe it could correct the Appellants' parcels and not address the problems that may exist with other parcels in the county.

During further investigation, Loynachan had conversations with Iowa State University, which was responsible for the creation of the new CSR2 soil rating system based on soil types obtained from the NRCS soil samples. At this time Loynachan discovered the new CSR2 ratings used for the 2017 and subsequent assessments, were determined prior to the subject parcels strip mining.

In April 2018, Chase performed an on-site inspection of the subject parcels. (Dockets 10028A & 10020A, Ex. 3). He reported that while the subject sites have been reclaimed to cropland and/or grassland, the tract he visited had poor productivity growth due to a lack of topsoil and high amount of compaction. He was unable to hand probe past sixteen inches due to the layer of compaction. In Chase's opinion, "the soil map does not best represent the soil properties for this area due to the manipulation of the land." Because of this he recommends "this area should be delineated and labeled as the 5040 – Anthropotic Udorthents 2 to 9 percent slopes soil map unit due to the land reclamation." (Dockets 10028A & 10020A, Ex. 3). Loynachan testified that after Chase's inspection, "the NRCS changed the CSR2 rating from a 47.8 to a 5 and that they would send a report in and it would be changed." Despite this, when no change occurred, the Appellants contacted Chase, who told them the NRCS could only change the reports in October. In 2018, the reports still had not been changed and the Appellants again filed a petition with the Board of Review for that assessment year. Loynachan testified that because the reports had not been changed, the Board of Review believed they were unable to make any changes to the 2018 assessed value of the parcels.

Despite being told the CSR2 ratings would be changed, nothing occurred and the Appellants contacted Chase again in June 2019, resulting in an exchange of emails between Chase and Ryan Dermody, a soil scientist with the Waverly MLRA (Major Land Resource Area) Soil Survey Office. (Dockets 10028A & 10020A, Ex. 4). In response to Chase's follow up with a request to update the soil survey for the subject parcels, Dermody explained the updates provided could only be used for conservation planning purposes and USDA programs. The MLRA Soil Survey Office does not "change official maps for land valuation or tax assessment, [t]his includes map edits based on CSR2 update request[s]." (Dockets 10028A & 10020A, Ex. 4).

### **Analysis & Conclusions of Law**

The Appellants contend there is an error in their assessments and that their properties are assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2 & 4).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

Under Iowa Code section 441.37(1)(a)(4), an aggrieved taxpayer or property owner may appeal their assessment on the basis "[t]hat there is an error in the assessment." An error may include, but is not limited to, listing errors or erroneous mathematical calculations." Iowa Admin. Code R. 701-71.20(4)(b)(4).

The Appellants assert soil ratings applied to their properties are incorrect because of extensive strip mining on the sites that occurred between 1989 and the early 2000s. The Board of Review offered evidence suggesting little to no mining occurred on the subject properties during that time, but we do not find that evidence believable in light of the contradictory evidence the Appellants offered.

In the Appellants' opinion, the evidence is clear that the current CSR2 ratings are based on soil maps developed prior to the strip mining that occurred on the subject parcels. The record is uncontroverted on this point. Because of this, the Appellants

believe an error has been shown and the ratings on their parcels should be corrected to reflect the poor soil ratings that have since been identified by experts.

The subject property is classified agricultural. Iowa Code section 441.21(1)(e) requires agricultural property be assessed by giving exclusive consideration to its productivity and net earning capacity. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

§ 441.21(1)(e); R. 701-71.3. Assessors are to consider the results of a modern soil survey, if completed. § 441.21(1)(f); R. 701-71.3.

The Department of Revenue has adopted rules to determine productivity and net earning capacity. In making a determination of value, assessors “shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), USDA Farm Service Agency (FSA), the Iowa department of revenue, or other reliable sources.” R. 701-71.3(1)(a). The IOWA REAL PROPERTY APPRAISAL MANUAL shall be used, as well as any other IDR guidelines. R. 701-71.3(1)(a).

One part of the productivity and net earning capacity formula includes the corn suitability ratings (CSR). The CSR reflects a given soil type’s potential productivity and serves to provide an equitable basis for farmland assessment. MANUAL, 2-25 (2008). The CSR2 formula considers the soil type, particle size, water holding capacity, field condition (including slope, flooding, ponding, erosion class, and topsoil thickness), soil depth and rate of erosion. *Id.* at 2-26.

Assessors are also required to designate agriculturally classified real estate as cropland or non-cropland. The MANUAL provides examples of cropland and non-cropland. MANUAL 2-26 to 2-28. Non-cropland is subject to adjustment by rule. R. 701-71.3(1). The MANUAL indicates that additional adjustments may be made to cropland and non-cropland for special considerations. MANUAL 2-27 to 2-28. It also provides that land that might otherwise be considered cropland should be treated as non-cropland in certain situations. MANUAL 2-28

This case is unusual amongst the cases brought before PAAB involving the valuation of agricultural real estate. In those other cases, the appellants alleged errors

in their CSR ratings, but the record did not include any soil report or other evidence demonstrating what the CSR should be. *Hunt Partnership v. Woodbury Cnty. Bd. of Review*, PAAB Docket No. 2017-097-00399A (May 23, 2018); *Mulder v. Mahaska Cnty. Bd. of Review*, PAAB Docket No. 2017-062-10190A (Feb. 8, 2018); *Danner v. Clarke Cnty. Bd. of Review*, PAAB Docket No. 2017-020-10172A (Jan. 26, 2018); *Goodhue v. Polk Cnty. Bd. of Review*, PAAB Docket No. 2016-077-00262A (Sept. 12, 2017).

Here, the Appellants have sufficiently demonstrated the modern soil survey is outdated as it pertains to these parcels and does not fairly represent the parcels' productivity and earning capacity because of the strip mining and poor reclamation. They have introduced evidence suggesting the CSR rating at one tract of the parcels should be a '5'. We find this evidence demonstrates an error in the assessment and that the subject parcels' assessments are for more than the value authorized by law.

We are not inclined to adjust all of the parcels' CRS ratings to '5', as it appears that was an isolated sample. We do, however, believe there is a sufficient basis to change the designation of the real estate to non-cropland in recognition of the parcels' impaired productivity and earning capacity until the soil maps are updated. See *Nimerichter v. Wayne Cnty. Bd. of Review*, PAAB Docket No. 2017-093-10000A (May 14, 2018).



## Order

PAAB HEREBY MODIFIES the Marion County Board of Review's action and orders the entirety of the subject parcels' land be designated as non-cropland.

PAAB FURTHER ORDERS the Assessor recalculate the January 1, 2019 assessed values of the newly designated non-cropland acres by applying the required adjustments. The modified assessed values shall be filed with PAAB within 15 days of the date of this Order for final approval.



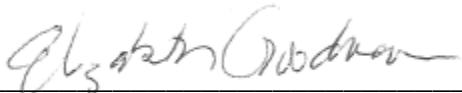
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